

**REMARKS**

Review and reconsideration of the Office Action dated June 23, 2009, is respectfully requested in view of the above amendments and the following remarks.

Applicant is submitting herewith a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address on this case.

**All correspondence should now be directed to:**

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The drawings have been amended to overcome the Examiner's objections. Description of the drawing changes can be found below.

Figures 1-3 have been amended to include arrows that pinpoint each one of the specific elements in the Figures.

Figure 3 has been further amended by deleting reference numbers 4-6 from the Figure.

New Figure 4 has been added to show the heater in conjunction with the device according to the present invention as requested by the Examiner. Support for new Figure 4 can be found on pages 2-3 of the specification as originally filed.

New Figure 5 has been added to show the details of the thermal bag according to the present invention. Support for new Figure 5 can be found on page 2 of the specification as originally filed.

The specification has been amended to overcome the Examiner's objections and to include the brief description of the new Figures 4-5.

Claims 1-3 have been canceled. Claims 4-10 have been added. Support for the claim amendment can be found on pages 2-3 of the specification as originally filed and original Figures 1-3.

**No new matter has been added to the drawings, specification, or claims by the present amendment.**

For the reasons set forth below, Applicant believes that the pending set of claims is now in condition for allowance.

#### **Office Action**

Turning to the Office Action, the paragraphing of the Examiner is adopted.

#### **Paragraphs 1-2 Drawings Rejection - Formalities**

The Examiner objected to the drawings because the drawings are incomplete.

The position of the Examiner can be found on pages 2-3 of the Office Action.

In response, Applicant is submitting herewith replacement Figures 1-3 and New Figures 4-5. Entry of the new Figures 4-5 is respectfully requested.

Applicant has amended Figures 1-3 to include arrows that pinpoint each one of the specific elements in the Figures.

Figure 3 has been further amended by deleting reference numbers 4-6 from the Figure.

New Figure 4 has been added to show the heater in conjunction with the device according to the present invention as requested by the Examiner.

New Figure 5 has been added to show the details of the thermal bag according to the present invention.

No new matter has been added to the drawings by these amendments.

Accordingly, withdrawal of the objection is respectfully requested.

**Paragraphs 3-4 Specification Rejection - Formalities**

The Examiner objected to the Specification because of formalities.

The position of the Examiner can be found on pages 3-6 of the Office Action.

In response, Applicants have amended the specification to overcome the objection. No new matter has been added by the present amendment.

Applicants are submitting a mark-up version of the specification showing all deletions and additions and a clean copy of the new specification.

Entry of the attached specification is respectfully requested.

Accordingly, withdrawal of the objection is respectfully requested.

**Paragraphs 5-6 Claims Rejection- Formalities**

The Examiner rejected the claims under 35 USC 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

The Examiner's position can be found on page 6 of the Office Action.

In response, Applicant has amended the claims in order to overcome the formalities rejections.

Accordingly, withdrawal of the objection is respectfully requested.

**Paragraphs 7-10 Claims Rejection- Formalities**

The Examiner rejected the claims under 35 USC 112, second paragraph, as being indefinite.

The Examiner's position can be found on page 7 of the Office Action.

In response, Applicant has amended the claims in order to overcome the formalities rejections.

Accordingly, withdrawal of the objection is respectfully requested.

**Paragraphs 11-12 (Anticipation)**

The Examiner rejects claims 1-3 under 35 U.S.C 102(b) as being anticipated by Hyatt (US Patent No. 5,999,699).

The position of the Examiner can be found on pages 7-8 of the Office Action.

Applicant respectfully traverses.

For a reference to anticipate, it must contain all the elements of the Claim.

Basically, the Examiner indicated that Ross teaches all the limitations of Claims 4-10.

Applicant reviewed the Hyatt reference and notes that the reference teaches a thermal retention device with outer covering for receiving a warmer and food to be heated. The heating pad includes an electrically resistivity coil contained within a volume. A phase change material is contained within the envelope in thermal conductivity with the resistivity element. (Abstract and Column 2, lines 1-10 and 40-48). The phase change material is a paraffin based material (Column 3, lines 1-5).

The present set of claims contains three independent claims, namely, Claims 4, 8, and 9.

The following remarks are addressed to independent Claims 4, 8, and 9, because if

these claims are not anticipated, it follows that none of the other rejected dependent claims are obvious.

Compared with Claims 4, 8, and 9, the Hyatt reference fails to teach: 1) a middle wall joined to and placed between the first wall and second wall, wherein the middle wall defines a first compartment and a second compartment; 2) the food is placed on the first compartment and the reusable heater device is placed on the second compartment; 3) the food does not have direct contact with the reusable heater device; 4) the reusable heater device is non-electrical; and 5) the reusable heater device comprises a sealed plastic bag filled with liquid and a trigger device immersed in the liquid.

Compared with Claim 8 (Closed transitional phrase “consisting of”), the Hyatt reference also fails to teach that the food heating device **only** contains the elements as claimed.

Compared with Claims 9 (method), the Hyatt reference also fails to teach placing the food on the first compartment; placing the reusable heater device on the second compartment; and creating a phase change reaction from liquid to solid on the liquid by activating the trigger.

Regarding points 1-3 (a middle wall joined to and placed between the first wall and second wall, wherein the middle wall defines a first compartment and a second compartment and the food is placed on the first compartment and the reusable heater device is placed on the second compartment, and the food does not have direct contact with the reusable heater device).

The Hyatt reference does not include a middle wall that separates the internal volume of the enveloped in two different containers.

In view that the present invention is directed to food warming devices, preventing the contamination of the food is very critical. It is imperative to have the food contained in a compartment separated from the compartment that contains the heating element,

especially because the heating element used by the present invention is filled with a liquid. Any spill of the liquid will contaminate the food; thus, it is fundamental on the present invention to keep the food and the heating element separate.

In view of the above, having the middle wall on the present invention is not a mere choice of design, but rather a necessity to prevent the contamination of the food.

There is not any technological motivation on Hyatt to have the interior of his device divided into compartments because the reference is directed to a heated cushion and preventing the contamination inside the cushion is not critical.

Regarding points 4 -5 (the reusable heater device is non-electrical and the reusable heater device comprises a sealed plastic bag filled with liquid and a trigger device immersed in the liquid)

Applicant notes that the heater device according to Hyatt is electrical- (See Figure 5, Column 2, lines 40-45 and 61-70) and needs to be plugged into an electrical outlet (Column 3, lines 27-43). Passing the electrical current on the heater produces the phase changing reaction from solid to liquid (Column 3, lines 1-5 - Note material is a paraffin based emulsion); thus, the phase change is from solid to liquid.

The heating element according to the claims requires being filled with a liquid that changes to a solid by the activation of the trigger.

Regarding Claim 8 (Closed transitional phrase "consisting of"), the Hyatt reference does not contain exactly the element of Claim 8. Applicant notes that the reference requires an electrical heater that contains electrical plugs. Furthermore, the reference requires that the coils be sandwiched between two layers of foam material (Column 2, lines 61-67).

Present Claim 8 does not require the above-identified elements; thus, the Hyatt reference fails to teach exactly what is encompassed by Claim 8.

Regarding Claim 9 (method), the Hyatt reference does not have a two compartment thermal bag, thus, the reference fails to teach the steps of placing the food on the first

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compartment; placing the reusable heater device on the second compartment; and creating a phase change reaction from liquid to solid on the liquid by activating the trigger.

Accordingly, withdrawal of the rejection is respectfully requested.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested. Should further issues remain prior to allowance, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number.

Respectfully submitted,

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Date: September 23, 2009

#### **CERTIFICATE OF ELECTRONICALLY FILING**

I hereby certify that a copy of the foregoing AMENDMENT A for U.S. Application No. 10/575,010 filed February 28, 2007, was electronically filed Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 23, 2009.

/Evelyn A. Defillo/  
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